

interested party review and Commission resolution of the forbearance petition. If a petitioner fails to provide this detailed analysis with its petition, the Commission should dismiss the petition without prejudice.

E. The Commission Should Address the Scope and Interpretation of Protective Orders Related to Forbearance Proceedings

Within twenty-one days of the filing of a forbearance petition, the Commission should issue a protective order delineating the proper treatment of Confidential and Highly Confidential documents. Given the short timeframes governing forbearance proceedings, it is essential that interested parties be afforded full, fair, and timely access to all relevant documents upon which the petitioner relies.

1. *All Interested Parties Should Be Permitted to Obtain a Copy of Confidential and Highly Confidential Documents*

The Commission should permit authorized individuals who have signed the protective order acknowledgment(s) to obtain all documents—regardless of whether they have been classified by the submitting party as Confidential or Highly Confidential—for review on their own premises. The protective order used by the Commission in several recent forbearance proceedings states:

Prohibited Copying. If, in the judgment of the Submitting Party, a document contains information so sensitive (even given its Highly Confidential designation) that it should not be copied by anyone, it shall bear the additional legend “Copying Prohibited” and no copies of such document, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to Outside Counsel of Record for the Submitting Party.⁴⁸

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Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas, Second Protective Order, WC Docket No. 07-97, DA 07-2293, ¶ 9 (rel. June 1, 2007).

Neither this copying restriction nor any other provision of a protective order should serve to permit the submitting (and designating) party from withholding any document in the first instance or from making available the document only on the submitting party's premises. Individuals who have executed the protective order Acknowledgment must be able to review a copy of the document on their own premises. Without copies of the relevant documents, interested parties would be forced to spend hours at the submitting party's premises to review documents, and to return again if they have remaining questions regarding a document. This process greatly impedes the full and fair review of documents relied upon by a submitting party and could hinder a thorough and complete analysis of the information submitted by a petitioner in support of its petition.

2. *All Confidential and Highly Confidential Documents Should Be Made Available in Searchable Electronic Format*

The Commission should adopt a rule requiring the submitting party to make available Confidential and Highly Confidential documents in searchable electronic format. Currently, the Commission only requires submitting parties to make available Highly Confidential information—not all information—in electronic format and only in response to a particular request.⁴⁹ Given the volume of information typically submitted in forbearance proceedings and the short timeframes within which parties must comment, it is essential that this requirement apply to all information, not just information designated as Highly Confidential. Furthermore, interested parties should not be required to request and then wait for the

⁴⁹ *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, Second Protective Order, WC Docket No. 07-97, DA 07-2293, ¶ 11 (rel. June 1, 2007) (stating, “[u]pon written request as provided for in paragraph 10, a Reviewing Party may review and analyze Highly Confidential Information that is maintained in an electronic format. The Submitting Party may require such electronic information [to] be reviewed at the office of their Outside Counsel of Record.”).

information to arrive in an electronic format. If information is readily available in electronic format, the submitting party should be required to make that information immediately available to the requesting party. The petitioner also must ensure that it submits the information in a searchable format. Forbearance proceedings typically are extremely detailed and fact-intensive proceedings and requiring a submitting party to make available Confidential and Highly Confidential data in a searchable electronic format would facilitate review of and comment on the subject information by all interested parties and the Commission.

3. *Authorized Persons Should Be Permitted to Use Confidential and Highly Confidential Data in Related Proceedings*

The protective orders issued by the Commission in several recent forbearance proceedings have expressly prohibited the use of Confidential and Highly Confidential information submitted in the docket for any purpose other than the preparation and conduct of the forbearance proceeding in which the document was submitted and any judicial proceeding arising directly from the forbearance proceeding.⁵⁰ The Commission should modify this approach and permit Confidential and Highly Confidential documents submitted in Section 10 forbearance proceedings to be used by authorized persons in other Commission forbearance proceedings in which a petitioning party seeks relief from the same rules and/or statutory provisions. Permitting authorized persons to use such documents in related proceedings is an efficient use of all parties' resources, and operates as a check and balance on information that a petitioner may use in subsequent proceedings.

The Commission also should specify that states are permitted to use documents designated as Confidential and Highly Confidential in related state proceedings. Any data that a

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See, e.g., Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas, Order, WC Docket No. 06-172, DA 07-208, ¶ 6 (rel. Jan. 25, 2007).

petitioner submits in support of a forbearance petition, particularly a petition requesting forbearance from Sections 251 and/or 271, may be highly relevant to a related state inquiry or docket and the state should not be prohibited from using Confidential and Highly Confidential data in the conduct of its proceeding. Under current forbearance proceeding protective orders, states conducting proceedings on whether sufficient competition exists to warrant forbearance from Section 251(c)(3) unbundling rules have been forced to seek the same data submitted by a petitioning party to the Commission in support of its petition from the company anew.⁵¹ This is an extremely inefficient and time-consuming process which threatens to impede state analysis that could provide the Commission with valuable input on whether the Section 10 forbearance criteria have been met.

There is no basis for preventing authorized state personnel from using information submitted in the Commission's forbearance docket in a proceeding within their own state, as long as all individuals in the state proceeding who are afforded access to Confidential and Highly Confidential information have acknowledged and agree to abide by the applicable Commission protective order. Having access to the data filed with the Commission would enable the states to cross-reference the information filed in their own proceedings and would lead to more valuable and timely input by the states to the Commission.

⁵¹ See, e.g., *Minnesota Public Utilities Inquiry Regarding the Petition for Qwest Corporation, Filed with the Federal Communications Commission, for Forbearance Pursuant to 47 U.S.C. Section 160(c) in the Minneapolis-St. Paul Minnesota Metropolitan Statistical Area*, Notice Soliciting Comment, Minnesota Public Utilities Commission, MPUC Docket No. P421/CI-07-661 (June 5, 2007); Letter from Maureen A. Scott, Arizona Corporation Commission to Regulatory Manager, XO Communications (June 21, 2007) (containing Arizona Corporation Commission Staff's first set of data requests to XO regarding Qwest's forbearance petition in WC Docket No. 07-97).

IV. THE COMMISSION SHOULD ADOPT A TIMELINE FOR SECTION 10 FORBEARANCE PROCEEDINGS

In addition to the statutory deadline associated with Section 10 forbearance petitions, the Commission should adopt its own timeline for Section 10 forbearance proceedings that incorporates a limited period for a petitioning party to cure minor defects in its petition without having to re-start the statutory clock, provides a specific vehicle for state commission input in the forbearance process, addresses motions to dismiss, and establishes a standard comment cycle. Since there is limited time available in which to conduct a forbearance proceeding, the Commission and all parties would benefit from clearly defined deadlines to guide the proceeding.⁵²

A. The Commission May Permit Petitioners to Correct Non-Essential Procedural Defects

Although the Petitioners advocate a complete-as-filed requirement,⁵³ we recognize that some Section 10 forbearance petitions may suffer from non-substantive defects that do not warrant rejection of the petition. Therefore, consistent with a complete-as-filed requirement, the Commission should adopt a corresponding timetable for forbearance petitions that would allow a petitioning party to correct non-material procedural defects in its forbearance petition. Specifically, the Commission should adopt a rule pursuant to which it will review a petition within 21 days of filing. If, within that time period, the Commission determines that the petition is procedurally deficient, it will provide the petitioning party with 14 days to perfect its petition. If the petitioning party does not perfect its petition within the specified time period, then the Commission should reject the petition without prejudice. Adoption of these requirements would inject more certainty into the forbearance process and would help ensure

⁵² Petitioners have attached a sample timeline as Attachment B.

⁵³ See Section III.C, *supra*.

that finite Commission and industry resources are not expended in responding to procedurally deficient petitions.

B. The Commission Should Delineate a Procedure for State Commission Input

The Commission should establish a procedure that encourages state input in forbearance proceedings. In certain forbearance proceedings, including, in particular, proceedings addressing forbearance from Sections 251 and 271, states are uniquely situated to provide valuable information concerning the markets in their states, and the Commission should adopt a rule that specifically builds state input into the timeline for consideration of a forbearance petition. In the past, states have provided valuable assistance in proceedings where the nature and extent of competition in local markets was at issue. For example, in Section 271 interLATA entry proceedings, the Commission embraced state input, recognizing that states have comprehensive knowledge of the status of their local markets,⁵⁴ and that states “are better positioned [than the Commission] to gather and assess the necessary information.”⁵⁵

Increasing numbers of petitions seeking forbearance from Sections 251 and 271 are being brought to the Commission, and resolution of these petitions requires a thorough analysis of competition in the relevant local markets. Consequently, interested states should be given adequate notice of forbearance petitions and related developments, and be afforded a well-defined opportunity to review and comment on these types of forbearance requests. To ensure that state input is most helpful to the Commission’s analysis, the opportunity for state review and presentation to the Commission should be completed prior to the general comment cycle on a petition to enable interested parties (and the petitioning party) to review and comment on the

⁵⁴ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 16978, 17096, n.598 (2003) (“*Triennial Review Order*”).

⁵⁵ *Id.* ¶ 188.

state analysis. Early state input also is beneficial because it would provide the Commission with ample opportunity to seek additional information from the petitioning party if the state input raises new issues. The Petitioners submit that the states should be afforded 90 days from the date the forbearance petition is filed in which to complete their review and present their views to the Commission.⁵⁶

C. The Commission Should Adopt A Framework Pertaining to Motions to Dismiss Section 10 Forbearance Petitions

The Commission should adopt a framework governing the filing and review of motions to dismiss Section 10 forbearance petitions. Section 1.727 of the Commission's rules governs the filing of motions before the Commission.⁵⁷ This general rule does not specifically address motions to dismiss nor does it identify any timeframe within which the Commission must act on a motion. Given the short timeframes under which the Commission and interested parties must operate in a Section 10 forbearance proceeding, the Commission should adopt rules that pertain specifically to motions to dismiss Section 10 forbearance petitions. To ensure adequate opportunity for Commission review, the Commission should require any motions to dismiss forbearance petitions to be filed within 45 days of public notice of the filing of a petition for forbearance. The party petitioning for forbearance would be afforded 10 days in which to file an opposition to the motion to dismiss, and the party filing the motion would then be afforded 5 days to reply. In turn, the Commission should commit to rule on the motion within 15 days of the filing of the reply and, as discussed in more detail below, the comment cycle on the petition would not begin to run until after the motion to dismiss is disposed of by the Commission.

⁵⁶ As discussed below, the formal comment cycle on a petition would not commence until expiration of this 90 day period.

⁵⁷ 47 C.F.R. § 1.727.

Under its current rules, the Commission is not obligated to take action to a motion to dismiss and, frequently, the Commission does not rule on motions to dismiss or other dispositive motions until the conclusion of a proceeding. This general practice has proven to be disruptive in recent forbearance proceedings. For example, Verizon submitted information along with its 6-MSA forbearance petitions that numerous parties maintain Verizon is not authorized to divulge. As a consequence of Verizon's action, numerous parties filed a joint motion to dismiss Verizon's petitions.⁵⁸ That motion has not been acted on by the Commission and, as a result, interested parties were compelled to address the suspect data in their comments and reply comments. If the Commission implements a rule which necessitates that it act on motions to dismiss within a specified time frame (*i.e.*, 15 days after a reply is filed), interested parties – and the Commission – would not have to spend valuable time and resources addressing petitions that are later disposed of on procedural grounds.

D. The Commission Should Establish a Standard Comment Cycle for Section 10 Forbearance Proceedings

The Commission should establish a standard comment cycle for all Section 10 forbearance petitions. The comment cycle should begin to run once the Commission has completed its initial review of the petition (and the petitioning party has cured any non-material procedural defects), after the applicable states have been given the opportunity to provide their input, and after the Commission has disposed of any motions to dismiss. At that time, commenters would be afforded 45 days to file comments and reply comments would be due 30 days after initial comments are submitted. As noted above, the Commission's practice has been to provide interested parties with an opportunity to file comments and reply comments on

⁵⁸ See *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, Motion to Dismiss, WC Docket No. 06-172 (filed Oct. 16, 2006).

forbearance petitions, but the Commission should institutionalize this practice to ensure that all parties are afforded due process.

E. The Commission Should Develop Policies Governing *Ex Parte* Submissions in Forbearance Proceedings

The Commission should develop policies governing *ex parte* submissions in Section 10 forbearance proceedings.⁵⁹ Specifically, unless explicitly requested by the Commission on a particular topic, the petitioning party should be prohibited from filing a substantive written *ex parte* with the Commission within 30 days of the initial statutory deadline in which to act on a petition.⁶⁰ Further, unless specifically requested by the Commission on a particular topic, interested parties (other than the petitioning party), should be prohibited from filing a substantive written *ex parte* with the Commission within 21 days of the initial statutory deadline in which to act on a petition.⁶¹ If a party, in response to a Commission request, files a substantive written *ex parte* with less than 7 days remaining in the statutory period, interested parties would have 7 days in which to file a response to that written *ex parte*, even if the *ex parte* window otherwise would have closed, but interested parties only would be permitted to respond to the precise issues raised in the substantive *ex parte*.⁶²

It is essential that the Commission insert a time limit on substantive *ex parte* submissions. Without a deadline for submitting substantive *ex partes*, petitioning parties have no

⁵⁹ The term “substantive *ex parte*” is intended to refer to any written materials submitted in a forbearance docket that contain any information other than an acknowledgement of a meeting with Commission staff.

⁶⁰ If the Commission elects to extend the statutory deadline ninety days, the *ex parte* window would close 30 days before the end of the additional ninety day period.

⁶¹ If the Commission elects to extend the statutory deadline ninety days, the *ex parte* window would close 21 days before the end of the additional ninety day period.

⁶² For example, if a party files a substantive written *ex parte* one day before the close of the *ex parte* window, interested parties would have 7 days to respond to that *ex parte* even though the *ex parte* window already will have closed.

incentive to ensure that the record is complete and, to the contrary, have the incentive to delay the filing of critical information until the 11th hour. Indeed, petitioning parties have been routinely making substantive filings immediately prior to the statutory deadline, purposefully foreclosing any meaningful analysis or comment on the late-submitted information.⁶³ This proposed rule would prevent parties from purposefully withholding critical information, because it would allow interested parties a reasonable opportunity to respond to last-minute submissions.

In addition, the Commission should require parties to serve all written *ex partes* filed with the Commission after the close of *ex parte* window (e.g., within the last 30 days of the statutory period for an *ex parte* filed by the petitioning party) on all parties that have submitted comments and/or reply comments in the proceeding. As the Petitioners repeatedly have emphasized in this petition, the Commission must act on Section 10 forbearance petitions within an extremely short timeframe. It is therefore essential that all parties have up-to-date information about the filings that have been made in the docket. There typically is a delay while submissions are uploaded in the Commission's Electronic Comment Filing System ("ECFS"), and an even greater delay if documents have been filed under seal. Requiring parties to serve *ex partes* filed after the close of the *ex parte* window on all active participants in the proceeding simply makes good sense.

V. THE COMMISSION SHOULD ADOPT ADDITIONAL REQUIREMENTS FOR PETITIONS SEEKING FORBEARANCE FROM SECTIONS 251 AND 271

The Commission should adopt additional requirements and procedures applicable to petitions for forbearance from the network element obligations set forth in Sections 251(c)(3) and 271(c)(2)(B) of the Act. There is abundant justification for treating Section 251(c)(3) and 271(c)(2)(B) petitions with heightened care and for subjecting Section 251(c)(3) and Section

⁶³ See, e.g., *Verizon February 7th Ex Parte*.

271(c)(2)(B) petitions to additional procedural requirements. The unbundled network elements (in particular, the local loops and dedicated transport) that those provisions require the BOCs to make available to requesting telecommunications carriers at cost-based rates are essential inputs to the products and services competitive local exchange carriers (“CLECs”) provide to their end user customers and are a key enabler of telecommunications competition. Unbundled network elements (“UNEs”) form the foundation for much of the competition that has developed in the residential and enterprise markets over the past ten years. Indeed, Congress recognized the critical nature of these unbundling obligations when it specified that the Commission may not forbear from applying the requirements of Sections 251(c) or 271 “until it determines that those requirements have been fully implemented.”⁶⁴ Moreover, the Commission’s *Triennial Review Order* and *Triennial Review Remand Order* already provide a detailed framework for elimination of unbundling obligations that are no longer necessary.⁶⁵

A. The Commission Should Mandate Additional Criteria To Be Included In Petitions For Forbearance From Sections 251 and/or 271

The Commission to date has reviewed and granted (in part) several petitions for forbearance from Section 251(c)(3) of the Act.⁶⁶ Although the Commission has repeatedly stated that each forbearance petition must be judged on its own merits, in addressing these previous Section 251(c)(3) petitions the Commission followed “as closely as possible based on the

⁶⁴ 47 U.S.C. § 160(d).

⁶⁵ See *Review of the Section 251 Unbundling Obligations of Local Exchange Carriers; Implementation of Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand, 18 FCC Rcd 16978 (2003) (“*Triennial Review Order*”); *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533 (2005) (“*Triennial Review Remand Order*”), *aff’d* *Communications v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

⁶⁶ See *Omaha Forbearance Order*; *Anchorage Forbearance Order*.

record” the relief that it had previously granted.⁶⁷ In light of the certainty that the Commission will be called upon to resolve additional petitions for forbearance from Sections 251 and 271,⁶⁸ the Commission should adopt filing requirements that will ensure as complete and comprehensive a record in these proceedings as possible as early in the forbearance process as feasible.

Specifically, in proceedings seeking forbearance from Sections 251 and/or 271, the Commission should require any petition seeking forbearance from those statutory provisions to include all supporting data at the wire center level and relevant declarations in support of that wire center data. The Commission also should require the petition to include all data explaining the methodology employed to produce the wire-center specific data contained in the forbearance petition.

If the petition does not include all empirical data relied upon by the petitioning party at the wire center level and all data explaining the methodologies used to arrive at that data, the Commission should dismiss the petition with leave to refile. In Section III.C, *supra*, the Petitioners urged the Commission to adopt a complete-as-filed rule, which would authorize the Commission to dismiss petitions that are incomplete upon filing. With regard to petitions seeking Section 251(c)(3) and/or 271(c)(2)(B) forbearance, a *prima facie* case should include information provided at the wire center level. Thus, the Commission should not deem a petition to be complete unless it includes wire center-specific market data.

⁶⁷ *Anchorage Forbearance Order*, at ¶1 (stating that the Commission will follow the relief that it granted to Qwest in the Omaha MSA).

⁶⁸ Currently, there are ten petitions seeking forbearance from Section 251(c)(3) loop and transport unbundling obligations pending before the Commission. *See Verizon 6-MSA Petition; Qwest 4-MSA Petition.*

B. The Commission Should Encourage Affected States to Submit Input to the Commission on the Potential Effects of UNE Forbearance in their State

As noted herein, the Commission previously has acknowledged that the states are in a unique position to identify the nature and extent of competition in their local jurisdictions.⁶⁹ That state expertise is particularly important in addressing Section 251 and 271 forbearance petitions, where the extent of facilities-based competition is a critical component of the Commission's forbearance analysis. The Commission should call upon the states' expertise in this area by adopting a rule inviting states to report to the Commission on the potential effects of Sections 251 and/or 271 forbearance in their states.

VI. THE COMMISSION SHOULD ISSUE A WRITTEN ORDER ON ALL FORBEARANCE PETITIONS

The Commission's rules should require the issuance of a written order on all forbearance petitions, including those petitions that previously have been "deemed granted." First, the Commission should commit to issuing a written order within seven days of the close of the statutory period for all Section 10 forbearance petitions that have been either granted or denied (in whole or in part). The timely issuance of a written order on a petition that has been granted or denied would facilitate any appeal of that order and expedite ultimate resolution of the relevant issues.

Second, if the Commission does not act to grant or deny a petition within the statutory period and the petition is deemed granted pursuant to Section 10(c), the Commission should maintain an open docket in that proceeding. Keeping the forbearance docket open would permit the Commission revisit the petition and issue an order granting or denying the petition if circumstances later warrant. The rules should require the Chairman to poll the commissioners

⁶⁹ *Triennial Review Order*, 18 FCC Rcd at 17096, n.598 (citations omitted).

every 90 days to determine if circumstances permit the issuance of a written order on a forbearance petition previously deemed granted.

VII. PETITIONS FOR RECONSIDERATION

The Commission should adopt a policy whereby petitions for reconsideration of orders disposing of Section 10 forbearance petitions are subject to the rules pertaining to petitions for reconsideration of orders issued in rulemaking proceedings. Requiring forbearance petitions to be subject to the same standards as petitions for reconsideration in rulemaking proceedings would bring additional much-needed order to forbearance proceedings by providing interested parties with an established process for addressing requests for reconsideration of Commission action granting or denying forbearance petitions.

VIII. CONCLUSION

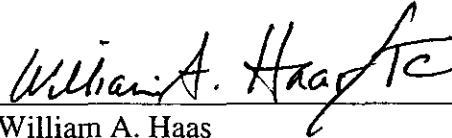
For all of the foregoing reasons, the Commission should promptly adopt, at a minimum, the procedural requirements proposed in this petition.

Respectfully submitted,



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ATTACHMENT A

PROPOSED PROCEDURAL RULES

Subpart X – Forbearance Proceedings

§ 1.0 Scope.

This Subpart shall be applicable to petitions for forbearance filed under Section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160.

§ 1.1 Definitions.

For purposes of this Subpart, the following terms are defined as follows:

(a) *Affected State* means any state containing a geographic market within which a forbearance petitioner is seeking forbearance from Sections 251 or 271 of the Act.

(b) *Authorized person* means any person permitted to obtain access to Confidential or Highly Confidential Information pursuant to a protective order adopted in the applicable forbearance proceeding.

(c) *Confidential Information* means information contained in Stamped Confidential Documents or derived therefrom that is not otherwise available from publicly available sources.

(d) *Forbearance Petitioner* means the party that files a petition seeking forbearance under Section 10.

(e) *Highly Confidential Information* means information contained in Stamped Highly Confidential Documents or derived therefrom that is not otherwise available from publicly available sources.

(f) *Stamped Confidential Document* means any document, or part thereof, filed with the Commission in a forbearance proceeding that bears the legend (or which otherwise shall have the legend recorded upon it in a way that brings its attention to a reasonable examiner) “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER,” unless the Commission determines *sua sponte* or by request pursuant to Sections 0.459 or 0.461 of its rules, that any such document is not entitled to such confidential treatment.

(g) *Stamped Highly Confidential Document* means any document, or part thereof, filed with the Commission in a forbearance proceeding that bears the legend (or which otherwise shall have the legend recorded upon it in a way that brings its attention to a reasonable examiner) “HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER,” unless the Commission determines *sua sponte* or by request pursuant to Sections 0.459 or 0.461 of its rules, that any such document is not entitled to such highly confidential treatment.

(h) *Substantive Written Ex Parte* means any written submission in a forbearance proceeding that addresses or relates to the forbearance requested by the forbearance petitioner.

§ 1.2 Petitions for Forbearance.

(a) Subject to Section 332(c)(1)(A) of the Act, any telecommunications carrier or class of telecommunications carriers may petition the Commission for forbearance from any regulation or provision of the Act with respect to that carrier or carriers, or any service offered by that carrier or carriers.

(b) The Commission shall grant the petition for forbearance if it determines that:

(i) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(ii) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(iii) forbearance from applying such provision or regulation is consistent with the public interest.

(c) In making the determination under Section 1.2(b)(3), the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services.

(d) The forbearance petitioner bears the burden of proof to demonstrate that each of the criteria set forth in Section 10 of the Act and enumerated in Section 1.2 herein are satisfied.

(e) The forbearance petitioner must supply all of the information upon which it bases its showing that it has satisfied each of the criteria set forth in Section 10 of the Act and enumerated in Section 1.2 herein.

§ 1.3 Content of Petitions.

(a) The forbearance petition shall contain:

(1) all of the evidence upon which the forbearance petitioner would have the Commission rely in evaluating whether the statutory requirements of Section 10 have been met;

(2) a legal analysis demonstrating how the forbearance petitioner satisfies each the statutory requirements of Section 10;

(3) an affidavit signed by an officer or director of the carrier affirming that all statements contained in the forbearance petition and all supporting materials are true and correct.

(4) for petitions seeking forbearance under Sections 251 and/or 271 of the Act, the forbearance petitioner shall include in the petition all supporting data at the wire center level, all declarations in support of that wire center data, and an explanation of the methodologies employed to arrive at that wire center data.

(b) The Commission shall review all forbearance petitions within twenty-one days of the filing thereof.

(c) If, during this twenty-one-day period, the Commission determines that a petition suffers from one or more non-material procedural defects, it will provide the forbearance petitioner with fourteen days to perfect its petition. If the forbearance petitioner does not perfect its petition within the specified time period, the Commission shall dismiss the petition without prejudice.

(d) If, during this twenty-one-day period, the Commission determines that a petition suffers from material procedural defects, including, but not limited to, failure to comply with any of the rules in this Subpart, the Commission shall reject the petition without prejudice.

(e) For purposes of a petition seeking forbearance from Section 251(c)(3) or 271(c)(2)(B) of the Act, the Commission shall determine the failure to provide data at the wire center level and all supporting data (including methodologies used to arrive at that data) to be a substantive defect, and the Commission shall dismiss such petition without prejudice.

(f) The forbearance petitioner is prohibited from supplementing its petition unless specifically directed by the Commission.

(f) The forbearance petitioner is prohibited from including any legal analysis in any affidavits, declarations, or attachments.

§ 1.4 State Input.

Any affected state shall be afforded ninety days from the date of filing of a petition seeking forbearance from Sections 251 or 271 of the Act in which to review the forbearance petition and provide its views on such petition with the Commission.

§ 1.5 Motions to Dismiss.

(a) Motions to dismiss a forbearance petition shall be filed within forty-five days of the filing date of the forbearance petition.

(b) Oppositions to a motion to dismiss may be filed and served within ten days after the motion to dismiss is filed and served. Oppositions shall be limited to the specific issues and

allegations contained in the motion. Failure to oppose any motion to dismiss may constitute grounds for granting the motion.

(c) A reply to any motion to dismiss shall be filed and served within five days after the time for filing oppositions to the motion has ended.

(d) The Commission shall rule on the motion to dismiss within fifteen days of the close of the period in which a reply must be filed.

§ 1.6 Notice and Comment Procedures.

(a) All forbearance petitions filed under Section 10 and this Subpart shall be governed by the notice and comment procedures set forth in Section 553 of the Administrative Procedure Act, 5 U.S.C. §553.

(b) The Commission shall issue a public notice of the forbearance petition.

(c) After the Commission issues a public notice of the forbearance petition, the Commission shall afford interested persons an opportunity to participate in the forbearance proceeding through the submission of written data, views, or arguments, with or without opportunity to present the same orally in any manner.

(d) The Commission shall provide interested persons with forty-five days to file comments in response to forbearance petitions. Reply comments shall be due thirty days after the close of the initial comment cycle.

(e) The comment cycle set forth herein shall not begin to run until the day after the time period for affected states to submit comments as set forth in Section 1.4 has run.

§ 1.7 Protective Orders.

(a) Within twenty-one days of the filing of a forbearance petition, the Commission shall issue a protective order addressing the treatment of Confidential and Highly Confidential documents.

(b) All authorized individuals who have signed the protective order acknowledgment shall be permitted to obtain a copy of all documents, including documents that the submitting party has classified as Confidential or Highly Confidential, for review on their own premises.

(c) The forbearance petitioner shall make available all Confidential and Highly Confidential documents in a searchable electronic format.

§ 1.8 Use of Confidential and Highly Confidential Information.

(a) All authorized individuals shall be permitted to use Confidential and Highly Confidential documents in other Commission forbearance proceedings in which forbearance is

being sought from the same rule and/or statutory provision that a forbearance petitioner sought forbearance from in the proceeding in which the Confidential and Highly Confidential documents were filed.

(b) Affected states shall be permitted to use documents designated as Confidential and Highly Confidential in related state proceedings.

§ 1.9 *Ex Parte* Procedures.

(a) Unless specifically requested by the Commission, the forbearance petitioner shall be prohibited from filing a substantive written *ex parte* with the Commission within thirty days of the initial statutory deadline in which the Commission must act on a petition. If the Commission exercises its authority under Section 10(c) to extend the statutory period ninety days on a petition, unless specifically requested by the Commission, the forbearance petitioner shall be prohibited from filing a substantive written *ex parte* with the Commission within thirty days of the expiration of the additional ninety day period.

(b) Unless specifically requested by the Commission, any interested party shall be prohibited from filing a substantive written *ex parte* with the Commission within twenty-one days of the initial statutory deadline in which the Commission must act on a petition. If the Commission exercises its authority under Section 10(c) to extend the statutory period ninety days on a petition, unless specifically requested by the Commission, any interested party shall be prohibited from filing a substantive written *ex parte* with the Commission within twenty-one days of the expiration of the additional ninety day period.

(c) If a party, in response to a Commission request, files a substantive written *ex parte* with less than seven days remaining in the original statutory period or the additional ninety day period, interested parties shall have seven days in which to file a response to that written *ex parte*. Interested parties only shall be permitted to respond to the precise issues raised in the substantive written *ex parte*.

(d) Any forbearance petitioner filing a substantive written *ex parte* after the close of the *ex parte* window (i.e., within thirty days of the initial statutory deadline or within thirty days of expiration of the additional ninety day period) must serve that *ex parte* on all parties that have submitted comments and/or reply comments in the forbearance proceeding.

(e) Any interested party filing a substantive written *ex parte* after the close of the *ex parte* window (i.e., within twenty-one days of the initial statutory deadline or within twenty-one days of expiration of the additional ninety day period) must serve that *ex parte* on all parties that have submitted comments and/or reply comments in the forbearance proceeding.

§ 1.10 Action on Petitions.

(a) The Commission shall issue a written order on all forbearance petitions it has acted on to grant or deny, in whole or in part, within seven days of the close of the statutory period.

(b) If the Commission does not act to grant or deny a petition, in whole or in part, within the statutory period and the petition is deemed granted pursuant to Section 10(c) of the Act, the Commission shall maintain an open docket in that proceeding.

(c) The Chairman shall poll the commissioners every ninety days to determine if circumstances permit the issuance of a written order on a forbearance petition that previously has been deemed granted pursuant to Section 10(c).

§1.11 Petitions for Reconsideration.

Any interested person may petition for reconsideration of a final action granting or denying a forbearance petition, in whole or in part, in a proceeding conducted under this Subpart. Petitions for reconsideration of final actions in this Subpart shall be filed pursuant to the rules set forth in Section 1.429.

ATTACHMENT B

TIMELINE FOR FORBEARANCE PETITIONS

Day 0	Petition for Forbearance Filed
Day 21	FCC identifies any deficiencies in Petition for Forbearance or dismisses the petition if it contains fatal flaws.
Day 21	FCC Issues Protective Order
Day 35	Petitioner May Perfect its Petition
Day 45	Motions to Dismiss Due
Day 55	Oppositions to Motion to Dismiss Due
Day 60	Reply to Motion to Dismiss Due
Day 75	FCC Rules on Motion to Dismiss
Day 90	State Commission Submits Input
Day 135	Comments Due
Day 165	Reply Comments Due
Day 335 ¹	Last Day for Petitioning Party to File Written <i>Ex Parte</i>
Day 344 ²	Last Day for Interested Parties to File Substantive Written <i>Ex Parte</i>
Day 365	FCC Issues Decision
Day 372	Written Order Due

¹ If the Commission extends the statutory period ninety days, the last day for the petitioning party to file a substantive written *ex parte* is Day 425.

² If the Commission extends the statutory period ninety days, the last day for interested parties to file a substantive written *ex parte* is Day 434.